IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.778 OF 2005

Shri Vagad Visha Oswal Mrutipujak
Tapa Gachha Jain Sangh. ....Petitioner.

Vs.

Municipal Corproation for Gr.
Mumbai & Ors. ....Respondents.

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Mr.O.J.Menezes with Mr.Ketan Parikh for the Petitioner.

Mrs. A.R.Joshi for Respondent Nos.1 to 3.

Mr.Santosh Shetty for Respondent Nos.4 and 5.

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CORAM : DR.D.Y.CHANDRACHUD, J.

April 5, 2005.

P.C. :

1. The dispute in the present case relates to certain residential premises comprising of Block No.3, admeasuring about 450 sq.ft. and situated on the ground floor of Alankar Building on S.N.Road at Andheri (East), Mumbai-400 069. The Fourth and

Fifth Respondents are tenants in the building. Besides claiming an interest in the aforesaid premises the Petitioner also claims to be a tenant in respect of a garage admeasuring 100 sq.ft., that is situated in the compound of the building.

2. The Fourth and Fifth Respondents instituted a petition under Article 226 of the Constitution, Writ Petition No.1983 of 2002, before this Court in which the grievance was that the Municipal Corporation was not taking any action against the Petitioner for the nuisance which has been caused to the residents of the building due to religious activities that are being carried out by the Trust in the premises of the flat and the garage. The Municipal Corporation issued, in the meantime, a notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 on 22nd October 2002 in respect of the unauthorised user of the flat and the garage. The Petition was accordingly disposed of by a Division Bench on 24th October 2002. The Fourth and Fifth Respondents instituted a suit before the City Civil Court being Suit No.4731 of 2002, challenging the user of the garage for religious purposes which suit is stated to be pending. In terms of the order of the Division Bench dated 24th October 2002 and in

pursuance of the notice under Section 53(1), an order was passed by the Assistant Commissioner of the Municipal Corporation on 10th March 2004 rejecting the objections of the Fourth and Fifth Respondents. That order was challenged before a Learned Single Judge of this Court in Writ Petition 4547 of 2004. The Petition was disposed of on 18th October 2004 by quashing and setting aside the order dated 6th July 2004 and remanding the matter to the Assistant Commissioner for fresh consideration. Accordingly, the matter was heard and the impugned order has been passed by the Deputy Municipal Commissioner on 7th February 2005. The Deputy Municipal Commissioner has noted that Flat No.3 has been repaired and converted into an *Upashraya* by demolishing the internal walls, the bathroom, lavatory and kitchen without the permission of the Municipal Corporation and the garage has been converted into a temple without the permission of the Corporation which creates a nuisance in the compulsory open space. The Deputy Municipal Commissioner has directed the Petitioner to discontinue the religious activities of the Trust in the premises and action has been directed to be taken in respect of the unathorised change of user of the residential flat and the garage.

3. The challenge in these proceedings has been confined to the order of the Deputy Municipal Commissioner in so far as it pertains to Flat No.3. At the hearing, Counsel appearing on behalf of the Petitioner stated that the Trust is ready and willing to file an undertaking before the Court to the effect that (i) The residential flat shall only be used for providing transit accommodation for Jain Priests; (ii) No religious activities such as discourses or Satsangs shall be carried on in the premises; (iii) Members of the community will visit the Priest subject to the condition that not more than five persons shall remain present at one time at the residential flat and that these meetings shall be confined only between 10 a.m. and 11 a.m. on Mondays to Fridays. No such meeting shall take place on Saturdays and Sundays; (iv) Within a period of two months from today, the Trust shall restore the residential flat to a condition that accords with the sanctioned building plan with due permission of the Municipal Corporation; and (v) No change in the user of the flat shall be made save and unless the prior permission of the Municipal Corporation has been taken in accordance with law. An undertaking in these terms has been placed on the record of these proceedings in an affidavit dated 5th April 2005 of

the President of the Petitioner Trust. The affidavit states that the undertaking has been furnished by the President on behalf of the Trust and that it would bind the Trust in all respects. Counsel appearing on behalf of the Fourth and Fifth Respondents who are also residents of the building, has perused a copy of the undertaking and he submits that this would meet the ends of justice. The undertaking which has been filed on behalf of the Petitioner is accepted.

4. In the event that any application is made by the Trust to the Municipal Corporation for a change of user or for additions and alterations, the Municipal Corporation shall give notice to the Fourth and Fifth Respondents who would be at liberty to file such objections as they have to the proposed change of user or additions and alterations.

5. Counsel appearing on behalf of the Petitioner-Trust has stated that the fifth anniversary of the temple is being celebrated today and the function may be allowed to take place only for today without the use of any loudspeaker. Permission to do so is granted only for the function which is to be held today and subject to

the condition that hereafter the order of the Deputy Municipal Commissioner shall be observed in all respects, in respect of the premises of the flat and the garage.

6. In view of the undertaking which has been submitted before the Court, no further directions are necessary, save and except to accept the undertaking as tendered. The Petition is accordingly disposed of.

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